## Regulation 39-21-103. Hearings

- (1) Examination and Notice of Deficiency. Tax returns will be examined by the agents of the Executive Director of the Department of Revenue and the correct amount of tax determined. Various sections of this article provide a complete procedure for the review of the tax returns and the final determination of the correct amount of the tax due from each taxpayer. This procedure normally comprises the following steps:
- (a) Examination of the tax return by the department of revenue.
- (b) Mailing by first class mail as set forth in C.R.S. 39-21-105.5 of a Notice of Deficiency, if the Executive Director finds from the examination that a deficiency exists.

## (2) Protest.

- (a) If a taxpayer wishes to protest a Notice of Deficiency or any part thereof, it will be necessary for the taxpayer to request a hearing in writing before the executive director. Such a protest must be written and filed within thirty (30) days from date of the mailing of Notice of Deficiency. This thirty day period is fixed by statute and cannot be extended by the executive director. If the taxpayer fails to ask for a hearing within the thirty-day period, a Notice of Final Determination and Demand for Payment will automatically be mailed by certified mail at the expiration of said thirty-day period.
- (b) After a hearing or reconsideration of a deficiency, the taxpayer does not have the right to pay the tax, file a claim for refund, and have another hearing or reconsideration of the same deficiency.

## (3) Request for Hearing.

- (a) The request for hearing must contain at least the following information:
- (i) Taxpayer's name, address and account number.
- (ii) The taxable period(s) involved.
- (iii) The type and amount of tax in dispute.
- (iv) An itemized schedule of the findings with which the taxpayer does not agree.
- (v) A summary statement of the grounds upon which taxpayer relies for the purpose of showing that the tax is not due.
- (vi) The request for hearing must be filed for each deficiency in duplicate and signed by the taxpayer.
- (b) At the sole option of the executive director or his delegate additional time may be granted for completing items (iv) and (v), but only upon a satisfactory showing by the taxpayer that such time is necessary to prevent undue hardship.
- (3.5) Frivolous Requests. The Executive Director may reject a frivolous request for hearing related to income tax pursuant to §39-21-104.5, C.R.S.
- (4) Formal Hearing. Unless rejected under (3.5), the request for hearing will be calendared for formal hearing. At that hearing the taxpayer must present his entire case in support of his position. The Department of Revenue will be represented for hearing by an

attorney from the Colorado Department of Law, Office of the Attorney General. The hearing officer may require the parties to file hearing data certificates or other materials.

- (4.5) Waiver of Formal Hearing. If the taxpayer and the executive director agree that the disposition of the taxpayer's requested changes requires the resolution of a question of law arising under the United States or Colorado constitutions, the executive director shall memorialize the agreement and send the taxpayer a notice of the agreement by first-class mail as set forth in section 39-21-105.5. If a notice is sent pursuant to this subsection (4.5), a taxpayer may elect to waive a hearing pursuant to this section and appeal the notice of deficiency directly to the district court pursuant to section 39-21-105 within thirty days after the mailing of the notice.
- (6) **Hearing Officer.** The hearing shall be held before the Executive Director of the Department of Revenue or such person within the Department as the Director may designate, as provided in C.R.S. 39-21-103(6).
- (7) **Brief in Lieu of Hearing** The taxpayer may request that the executive director consider a brief in lieu of a hearing. After such request the executive director will proceed to reconsider the deficiency in the same manner as if the written material submitted had been presented at a formal hearing.
- (8) Director's Determination. After considering the evidence and arguments presented at the hearing, the executive director will make a determination within a reasonable time and send the taxpayer by first class mail as set forth in C.R.S. 39-21-105.5, a Notice of Final Determination and Notice and Demand for Payment, if appropriate. This constitutes an assessment. Within thirty days after the mailing of the Notice of Final Determination, the taxpayer shall either pay the tax or appeal to the district court as provided in C.R.S. 39-21-105.

If no appeal is made within thirty days, the determination of the executive director is final and is no longer subject to judicial review. Collection may then be enforced at any time within collection periods provided by statute from the date of such assessment. The thirty day period for filing an appeal is fixed by statute and cannot be extended by the executive director.

Except in case of jeopardy as provided in C.R.S. 39-21-111, the above procedure applies to all returns. The procedure prescribed in C.R.S. 39-21-111, in the case of jeopardy assessment, eliminates the protest and hearing before the executive director, but leaves the taxpayer his right to appeal from the final determination and assessment.